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**CUMULATIVE**  
**POCKET SUPPLEMENT**

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Idaho Code Commission

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COMMISSIONERS

TITLES 58-62

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## PUBLISHER'S NOTE

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Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports  
Pacific Reporter, 3rd Series  
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.



# ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2013 .....	April 4, 2013
2014 .....	March 20, 2014

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# TITLE 58

## PUBLIC LANDS

### CHAPTER.

1. DEPARTMENT OF LANDS, § 58-138.
3. APPRAISEMENT, LEASE, AND SALE OF LANDS,  
§§ 58-310 — 58-310B.

### CHAPTER.

11. REAL PROPERTY ACQUISITION, § 58-1104.

## CHAPTER 1

### DEPARTMENT OF LANDS

### SECTION.

- 58-138. Exchange of state land.

### 58-105. Director.

### RESEARCH REFERENCES

**Idaho Law Review.** — A Summary of Idaho Nears Reality, John F. Peiserich and Revisions to Idaho's Oil and Gas Conservation Michael R. Christian. 49 Idaho L. Rev. 497 Act and Rules: Responding as Production in (2013).

**58-138. Exchange of state land.** — (1) The state board of land commissioners may at its discretion, when in the state's best interest, exchange, and do all things necessary to exchange fee simple title to include full surface and mineral rights to any of the state lands now or hereafter held and owned by this state for lands of equal value, public or private, excepting lands that have as their primary value buildings or other structures, unless said buildings or other structures are continually used by a public entity for a public purpose. Land that the state owns known as "cottage sites" can be exchanged for lands of equal value, public or private. As used in this section, an exchange of state lands means a transaction in which the state conveys the land to another party or parties pursuant to an agreement that predates the exchange, in which transaction a party conveying land to the state may be different from a party to whom the state conveyed land. The parties dealing with the state in such an exchange transaction shall not be prohibited from purchasing or selling assets related to accomplishing the transaction before, simultaneously or after said transaction, provided that all such prior and simultaneous purchases and sales are expressly provided for in the exchange agreement.

(2) Provided further the state board of land commissioners may, in its discretion, hereafter grant and receive less than fee simple title, and grant or allow such reservations, restrictions, easements or such other impairment to title as may be in the state's best interest.

(3) No exchanges shall be made involving leased lands except upon the written agreement of the lessee.

(4) Subject to the approval of the state board of land commissioners, the first lease on lands acquired through land exchange and in lieu selections

shall be offered to the present user, lessee, or permittee of the land, provided that the present user agrees in writing to enter into a contractual management program through which the resource values of the land may be enhanced or improved for the purpose of increasing the income to the endowed institutions.

(5) Prior to the exchange of any state endowment lands pursuant to this section, the state board of land commissioners shall have an appraisal and review appraisal conducted of the lands it desires to exchange along with an appraisal and a review appraisal of the lands it is proposing to acquire in the exchange. All such appraisals and review appraisals shall be performed by appraisers who are licensed or certificated to perform such work in accordance with chapter 41, title 54, Idaho Code, and who are designated as members of the appraisal institute (MAI). All such appraisals and review appraisals shall conform to the uniform standards of professional appraisal practice (USPAP) standards.

(6) In determining the fair market value of state endowment lands to be exchanged and acquired pursuant to this section, the state board of land commissioners shall consider all relevant information and circumstances including, but not limited to, the appraisals and review appraisals required by the provisions of subsection (5) of this section and any evidence that enhances or detracts from their reliability.

(7) Annually on or before January 15 of each year, the state board of land commissioners shall submit a report of all state endowment lands exchanged and acquired and all appraisals and review appraisals conducted pursuant to this section to both houses of the legislature and to the audit division of the legislative services office.

#### History.

I.C., § 58-138, as added by 1963, ch. 147, § 1, p. 431; am. 1971, ch. 161, § 1, p. 780; am. 1979, ch. 191, § 1, p. 554; am. 1980, ch. 353,

§ 1, p. 915; am. 1992, ch. 226, § 2, p. 676; am. 2014, ch. 98, § 1, p. 292; am. 2014, ch. 246, § 1, p. 615.

### STATUTORY NOTES

#### Cross References.

Audit function of legislative services office, § 67-702.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

#### Amendments.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 98, rewrote subsection (1), which formerly read: "The state board of land commissioners may at its discretion, when in the state's best interest, exchange, and do all things necessary to exchange fee simple title to include full surface and mineral rights, to any of the state lands now or hereafter held and owned by this state for similar lands of equal value public or

private, so as to consolidate state lands or aid the state in the control and management or use of state lands."

The 2014 amendment, by ch. 246, added subsections (5) through (7).

#### Compiler's Notes.

For further information on the appraisal institute (MAI), see <http://www.appraisalinstitute.org/> and <http://www.appraisalinstitute.org/aboutfour-designations/>.

For further information on the uniform standards of professional appraisal practice (USPAP) standards, see <http://www.appraisalinstitute.org/professional-practice/ethics-and-standards/standard-of-professional-appraisal-practice/>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

CHAPTER 3

APPRAISEMENT, LEASE, AND SALE OF LANDS

SECTION.

58-310. Two or more applicants for same land — Auction of lease.

58-310A. Legislative findings and purposes — Leases of single family, recreational cottage sites and homesites not subject to con-

SECTION.

flict application and auction provisions. [Repealed.]

58-310B. Two or more applicants for same land — Auction of lease. [Repealed.]

58-310. Two or more applicants for same land — Auction of lease. — Except as otherwise authorized:

(1) When two (2) or more persons apply to lease the same land, the director of the department of lands, or his agent, shall, at a stated time, and at such place as he may designate, auction off and lease the land to the applicant who will pay the highest premium bid therefor, the annual rental to be established by the state board of land commissioners.

(2) The director shall give notice by letter at least fourteen (14) days prior to the date of such auction, which notice shall be sent in the course of regular mail, to each of the applicants, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address exactly as it is given in the application.

(3) If any applicants fail to appear in person or by proxy at the time and place so designated in said notice, the director may proceed to auction and lease any part or all of the lands applied for.

(4) The state board of land commissioners shall have power to reject any and all bids made at such auction sales, when in their judgment there has been fraud or collusion, or for any other reason, which in the judgment of said state board of land commissioners justified the rejection of said bids.

(5) The challenger of the current lease shall be required to provide payment of one (1) year's rental on the lease payable at the time of application to lease. If the amount of the annual rental bid be not paid forthwith by the successful bidder, together with the expense of such sale, if the state board of land commissioners shall require the same to be paid as hereinbefore provided, or if for any reason the successful bidder does not accept the lease on the terms offered, the lease may be immediately reoffered in the same manner at public auction, without further notice.

(6) Only those persons who have filed applications in the manner and at the time provided for by statute or rule shall be permitted to bid at any such auction for the lease of state lands.

History.

1905, p. 131, § 18; reen. R.C. & C.L., § 1577; C.S., § 2910; am. 1921, ch. 18, § 1, p. 26; am. 1923, ch. 117, § 1, p. 149; I.C.A., § 56-310; am. 1951, ch. 73, § 1, p. 114; am.

1974, ch. 17, § 62, p. 308; am. 1978, ch. 283, § 2, p. 689; am. 1981, ch. 350, § 1, p. 723; am. 1992, ch. 241, § 6, p. 713; am. 1995, ch. 231, § 1, p. 783; am. 2014, ch. 97, § 34, p. 265.

### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 97, deleted “in sections 58-310A and 58-310B, Idaho Code”

following “authorized” in the introductory language.

#### **58-310A. Legislative findings and purposes — Leases of single family, recreational cottage sites and homesites not subject to conflict application and auction provisions. [Repealed.]**

Repealed by S.L. 2014, ch. 97, § 35, effective July 1, 2014.

#### History.

I.C., § 58-310A, as added by 1990, ch. 187, § 1, p. 416.

### JUDICIAL DECISIONS

#### Constitutionality.

This section, which exempts cottage site leases from conflict auctions, violates Idaho Const., Art. IX, § 8, because the word “dis-

posal” in that constitutional provision covers any sale or lease. *Wasden v. State Bd. of Land Comm’n*, 153 Idaho 190, 280 P.3d 693 (2012).

#### **58-310B. Two or more applicants for same land — Auction of lease. [Repealed.]**

Repealed by S.L. 2014, ch. 97, § 35, effective July 1, 2014.

#### History.

I.C., § 58-310B, as added by 1995, ch. 231, § 2, p. 783; am. 1996, ch. 211, § 1, p. 683.

## CHAPTER 11

### REAL PROPERTY ACQUISITION

#### SECTION.

58-1104. Unsuccessful or abandoned eminent

domain proceeding — Award of litigation expense.

**58-1104. Unsuccessful or abandoned eminent domain proceeding — Award of litigation expense.** — (a) Should the court having jurisdiction of an eminent domain proceeding brought by the department, a political subdivision, or an agency seeking condemnation of an owner’s property render judgment that the department, political subdivision, or agency may not acquire the property by condemnation or should the proceeding be abandoned by the department, political subdivision, or agency, the court may award or the department, political subdivision, or agency may pay the owner of the real property such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding.

(b) Should the department, political subdivision or agency amend the

project after filing the condemnation complaint and service of the summons and the defendant property owner has actually incurred costs, disbursements, expenses and/or attorney’s fees thereafter directly relating to factual or legal issues or damage claims that are rendered moot by such amendment, then upon motion by the defendant property owner prior to judgment the court shall award such sum as will in the opinion of the court reimburse such defendant property owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and expert fees, actually incurred for generating the evidence rendered moot by reason of the amendment. The parties may stipulate that the factual or legal issues or damage claims are rendered moot by such amendment, or the court may determine such upon submission of affidavits by the parties. Factors for the court to consider demonstrating that the property owner incurred costs that are directly related include, but are not limited to:

- (1) Communications, or lack thereof, between the defendant property owner and the department, political subdivision or agency identifying the issues or claims rendered moot or requesting modifications to the project after service of the summons and prior to the time such amendment was made;
- (2) Disclosure by the defendant property owner of expert reports, letters or opinions after service of the summons and prior to the time the amendment was made;
- (3) Whether the department, political subdivision or agency and the defendant property owner each acted reasonably in negotiations after service of the summons and prior to such amendment; and/or
- (4) Whether the claimed costs, disbursements and expenses actually caused the amendment.

Any costs, fees or expenses awarded by the court on such motion shall be paid by the department, political subdivision or agency within sixty (60) days after the court rules on the motion and prior to the conclusion of the case.

If the department, political subdivision or agency and the defendant property owner agree to an amendment as part of a settlement agreement or resolution of a particular issue or claim, the department, political subdivision or agency is not required to pay the defendant property owner’s costs incurred relating to said amendment, unless the parties agree to such payment as part of the settlement or resolution of a particular issue or claim.

**History.**

1971, ch. 158, § 4, p. 774; am. 2014, ch. 269, § 1, p. 673.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 269, added the subsection (a) designation to the existing pro-

visions of this section and added subsection (b).

# CHAPTER 13

## NAVIGATIONAL ENCROACHMENTS

### 58-1302. Encroachment on navigable lakes — Definitions.

#### JUDICIAL DECISIONS

##### ANALYSIS

Line of navigability.  
Navigational.

#### Line of Navigability.

The line of navigability must be measured from the low water mark. It is not to be measured from an artificial high water mark. *Kaseburg v. State*, 154 Idaho 570, 300 P.3d 1058 (2013).

The department of lands cannot properly process an application for a navigational encroachment extending beyond the line of navigability, without having first made a determination of a line of navigability that comports with the statutory definition and that is based on substantial evidence. *Kaseburg v. State*, 154 Idaho 570, 300 P.3d 1058 (2013).

#### Navigational.

The inclusion of the word “pilings” in the definition of navigational encroachments was merely illustrative. It is highly unlikely that the legislature intended to define pilings used to support bridges, helipads, and goose nesting boxes as per se navigational. Similarly, the legislature almost certainly did not intend steel pilings driven into a lakebed to be considered “navigational” when such pilings have no specified use relating to navigation and are replacements for wooden pilings that also never had any navigational use. *Kaseburg v. State*, 154 Idaho 570, 300 P.3d 1058 (2013).

### 58-1303. Encroachment on navigable lakes — Powers of state land board.

#### JUDICIAL DECISIONS

#### Administration of Act.

The Idaho department of lands, as an instrumentality of the state board of land commissioners, is entrusted with administering

the lake protection act, § 58-1301 et seq. *Kaseburg v. State*, 154 Idaho 570, 300 P.3d 1058 (2013).

### 58-1305. Noncommercial navigational encroachments — Procedures — Repairs — Forms.

#### JUDICIAL DECISIONS

#### Administration of Act.

The Idaho department of lands, as an instrumentality of the state board of land commissioners, is entrusted with administering

the lake protection act, § 58-1301 et seq. *Kaseburg v. State*, 154 Idaho 570, 300 P.3d 1058 (2013).

**TITLE 59**  
**PUBLIC OFFICERS IN GENERAL**

CHAPTER.

5. SALARIES OF OFFICERS, §§ 59-501, 59-502.  
11. SOCIAL SECURITY BENEFITS, § 59-1101.  
13. PUBLIC EMPLOYEE RETIREMENT SYSTEM,  
§§ 59-1302, 59-1306, 59-1324, 59-1391.

CHAPTER.

15. SUPPLEMENTAL RETIREMENT SYSTEM. [REPEALED.]

**CHAPTER 5**  
**SALARIES OF OFFICERS**

SECTION.

- 59-501. Salaries of state elective officers —  
Regular payment — Traveling  
expenses — Fees property of  
state.

SECTION.

- 59-502. Salaries of judges.

**59-501. Salaries of state elective officers — Regular payment — Traveling expenses — Fees property of state.** — (1) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction shall, during their continuance in office, receive for their services compensation as follows:

Commencing on the first Monday in January 2015, until the first Monday in January 2016:

Governor, \$120,785 per annum;

Lieutenant governor, \$42,275 per annum;

Secretary of state, \$102,667 per annum;

State controller, \$102,667 per annum; said compensation to be audited by the legislative council;

State treasurer, \$102,667 per annum; and

State superintendent of public instruction, \$102,667 per annum.

(2) The governor, lieutenant governor, secretary of state, state controller, state treasurer and superintendent of public instruction shall, during their continuance in office, receive for their services compensation as follows:

Commencing on the first Monday in January 2016, until the first Monday in January 2017:

Governor, \$122,597 per annum;

Lieutenant governor, \$42,909 per annum;

Secretary of state, \$104,207 per annum;

State controller, \$104,207 per annum; said compensation to be audited by the legislative council;

State treasurer, \$104,207 per annum; and

State superintendent of public instruction, \$104,207 per annum.

(3) Commencing on the first Monday in January 2017, until the first Monday in January 2018, the governor shall receive for his services

compensation of \$124,436 per annum; and each officer named in subsection (2) of this section, except for the governor and attorney general, shall receive the following compensation for their services:

Lieutenant governor, thirty-five percent (35%) of the governor's compensation as provided for in this subsection, per annum;

Secretary of state, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum;

State controller, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; said compensation to be audited by the legislative council;

State treasurer, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; and

State superintendent of public instruction, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum.

(4) Commencing on the first Monday in January 2018, until the first Monday in January 2019, the governor shall receive for his services compensation of \$126,302 per annum; and each officer named in subsection (3) of this section, except for the governor and attorney general, shall receive the following compensation for their services:

Lieutenant governor, thirty-five percent (35%) of the governor's compensation as provided for in this subsection, per annum;

Secretary of state, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum;

State controller, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; said compensation to be audited by the legislative council;

State treasurer, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; and

State superintendent of public instruction, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum.

(5) Prior to the start of the next term of office for the attorney general, the attorney general's salary shall be increased to match that of a district judge as provided in section 59-502, Idaho Code, on December 31 of the last year of the attorney general's term of office. Such increase shall take effect on the first Monday in January of the attorney general's term of office.

(6) Such compensation shall be paid on regular pay periods as due out of the state treasury, and shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office; but no increase in the rate of compensation shall be made during the terms of such officers; provided however, that the actual and necessary expenses of the governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer, and superintendent of public instruction while traveling within the state, or between points within the state, in the performance of official duties, shall be allowed and paid by the state; not however, exceeding such sum as shall be appropriated for such purpose.

(7) Actual and necessary subsistence expenses of the governor while traveling in connection with the performance of official duties are hereby



expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. (Standard Travel Pay and Allowance Act of 1949).

(8) No officer named in this section shall receive, for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer to the credit of the state.

#### History.

1907, p. 465, § 1; compiled and reen. R.C., § 274; compiled and reen. C.L., § 274; C.S., § 405; am. 1927, ch. 117, § 1, p. 117; am. 1927, ch. 249, § 1, p. 412; am. 1929, ch. 30, § 1, p. 32; I.C.A., § 57-501; am. 1933, ch. 180, § 1, p. 334; am. 1941, ch. 70, § 1, p. 134; am. 1945, ch. 131, § 1, p. 199; am. 1949, ch. 241, § 1, p. 490; am. 1953, ch. 216, § 1, p. 330; am. 1955, ch. 69, § 1, p. 135; am. 1957, ch. 316, § 1, p. 674; am. 1961, ch. 326, § 1, p. 618; am. 1965, ch. 244, § 1, p. 596; am. 1970, ch. 263,

§ 1, p. 698; am. 1974, ch. 250, § 1, p. 1644; am. 1977, ch. 178, § 2, p. 459; am. 1978, ch. 101, § 1, p. 202; am. 1979, ch. 28, § 1, p. 44; am. 1982, ch. 303, § 1, p. 764; am. 1986, ch. 272, § 1, p. 695; am. 1989, ch. 251, § 1, p. 600; am. 1993, ch. 327, § 27, p. 1186; am. 1994, ch. 435, § 1, p. 1398; am. 1994, ch. 180, § 128, p. 420; am. 1998, ch. 399, § 1, p. 1247; am. 2002, ch. 340, § 1, p. 957; am. 2006, ch. 431, § 1, p. 1318; am. 2010, ch. 264, § 1, p. 666; am. 2014, ch. 356, § 1, p. 883.

#### STATUTORY NOTES

##### Amendments.

The 2014 amendment, by ch. 356, rewrote the section, increasing the salaries of the elected officers, adding present subsection (5), and redesignating the subsequent subsections.

##### Compiler's Notes.

S.L. 2014, Chapter 355, became law without the signature of the governor.

**59-502. Salaries of judges.** — (1) Commencing on July 1, 2014, the salary of the justices of the supreme court shall be one hundred thirty-five thousand dollars (\$135,000) per annum. Commencing on July 1, 2016, the salary of the justices of the supreme court shall be one hundred forty thousand dollars (\$140,000) per annum.

(2) Commencing on July 1, 2014, judges of the court of appeals shall receive an annual salary in an amount of five thousand dollars (\$5,000) less than the annual salary of a supreme court justice. Commencing on July 1, 2016, judges of the court of appeals shall receive an annual salary in an amount of ten thousand dollars (\$10,000) less than the annual salary of a supreme court justice.

(3) Commencing on July 1, 2014, district judges shall receive an annual salary in an amount of six thousand dollars (\$6,000) less than the annual salary of a judge of the court of appeals.

(4) Commencing on July 1, 2014, magistrate judges shall receive an annual salary in an amount of twelve thousand dollars (\$12,000) less than the annual salary of a district judge.

(5) Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his

consideration and determination thirty (30) days prior to his taking and subscribing said oath.

#### History.

1907, p. 465, § 2; reen. R.C. & C.L., § 275; C.S., § 406; am. 1921, ch. 23, § 1, p. 31; I.C.A., § 57-502; am. 1945, ch. 77, § 1, p. 120; am. 1949, ch. 252, § 1, p. 510; am. 1953, ch. 145, § 1, p. 234; am. 1957, ch. 315, § 1, p. 673; am. 1959, ch. 188, § 1, p. 418; am. 1962, ch. 180, § 1, p. 275; am. 1963, ch. 275, § 1, p. 709; am. 1965, ch. 303, § 1, p. 804; am. 1967, ch. 426, § 1, p. 1243; am. 1970, ch. 194, § 1, p. 562; am. 1973, ch. 4, § 1, p. 9; am. 1974, ch. 138, § 1, p. 1342; am. 1976, ch. 343, § 1, p. 1145; am. 1977, ch. 178, § 3, p. 459; am. 1978,

ch. 101, § 2, p. 202; am. 1980, ch. 252, § 1, p. 664; am. 1982, ch. 360, § 1, p. 911; am. 1985, ch. 29, § 8, p. 52; am. 1988, ch. 23, § 2, p. 25; am. 1990, ch. 39, § 2, p. 59; am. 1993, ch. 217, § 2, p. 680; am. 1996, ch. 257, § 2, p. 841; am. 1998, ch. 93, § 2, p. 338; am. 1999, ch. 250, § 2, p. 648; am. 2000, ch. 386, § 2, p. 1258; am. 2001, ch. 309, § 2, p. 1115; am. 2004, ch. 306, § 2, p. 855; am. 2005, ch. 399, § 4, p. 1361; am. 2006, ch. 369, § 1, p. 1107; am. 2007, ch. 81, § 1, p. 219; am. 2008, ch. 220, § 1, p. 680; am. 2012, ch. 329, § 1, p. 910; am. 2014, ch. 291, § 6, p. 734.

### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 291, rewrote the section, increasing the salaries of the

enumerated judges, adding subsections (3) and (4), and redesignating former subsection (3) and subsection (5).

## CHAPTER 11

### SOCIAL SECURITY BENEFITS

#### SECTION.

59-1101. Acceptance of benefits of federal social security act.

#### **59-1101. Acceptance of benefits of federal social security act. —**

(1) The state of Idaho on behalf of all of its officers and employees and the officers and employees of all of its agencies, counties and cities and of any and all of its municipal corporations, political subdivisions, governmental entities, independent bodies corporate and politic or any legal entity independently or collectively providing governmental functions and created pursuant to Idaho Code, hereby accepts the benefits of the provisions of the federal social security act, of 1935, as amended thereto, whenever the provisions of such act are extended to embrace their officers and employees; provided however, that any services performed pursuant to 42 U.S.C. section 418(c)(6) shall not be considered as employment within the meaning of this chapter.

(2) Pursuant to the provisions of 42 U.S.C. section 418(d)(1), (d)(3) and (1), the benefits described in this section are extended to police officer positions and firefighter positions covered by a retirement system.

(a) For the purposes of social security coverage and the provisions of this section, a “police officer position” means a paid position existing in the regularly organized police department or police force of the state or any political subdivision created pursuant to Idaho Code, whose primary duties and principal accountability consists of one (1) or more of the characteristics of maintaining order, preventing and detecting crime and enforcing the laws of the state or any political subdivision.

(b) For the purposes of social security coverage and the provisions of this

section, a “firefighter position” means a paid position existing in the organized fire department, district or association of incorporated municipalities, counties, state agencies or any political subdivision created pursuant to Idaho Code, whose primary duties and principal accountability consists of the prevention, pre-suppression, suppression and extinguishment of fires. A “firefighter position” includes positions such as a fire marshal whose principal accountability is to investigate the cause and origin of fires and includes a fire chief, fire captain and fire warden whose primary position and principal accountability requires direct supervision of employees engaged in the prevention, pre-suppression, suppression and extinguishment of fires. A “firefighter position” does not include an employee who may be required on occasion to engage in firefighter activities as a secondary requirement of the position.

(c) The terms “police officer position” and “firefighter position” do not include services in positions that, although connected with police officer and firefighter functions, are not police officer or firefighter positions.

**History.**

1949, ch. 285, § 1, p. 586; am. 1951, ch. 295, § 1, p. 652; am. 1953, ch. 81, § 1, p. 105; am.

1953, ch. 190, § 1, p. 299; am. 1955, ch. 14, § 1, p. 17; am. 1961, ch. 86, § 1, p. 117; am. 2013, ch. 334, § 1, p. 871.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 334, rewrote the section to the extent that a detailed comparison is impracticable.

in subsection (1), is codified as 42 U.S.C.S. § 301 et seq.

**Effective Dates.**

Section 2 of S.L. 2013, ch. 334 declared an emergency. Approved April 11, 2013.

**Federal References.**

The social security act of 1935, referred to

**CHAPTER 13**

**PUBLIC EMPLOYEE RETIREMENT SYSTEM**

**SECTION.**

59-1302. Definitions.

59-1306. Conformity with federal tax code to maintain qualified plan tax status.

**SECTION.**

59-1324. Transfer of moneys from state community college account.

59-1391. Definitions.

**59-1302. Definitions.** — (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) “Active member” means any employee who is not establishing the right to receive benefits through his or her employer’s participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D)(a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

- (a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country other than the United States, or from an intentionally self-inflicted injury; and
- (b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the

provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14)(A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer;

(b) Elected officials or appointed officials of an employer who receive a salary;

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days; or

(d) A person receiving differential wage payments as defined in 26 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or

(f) A person making contributions to the director of the office of personnel management under the United States civil service system retirement act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person not under contract with a school district or charter school, who on a day to day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by district policy or who, on a day to day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy;

or

(h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county, irrigation district, cemetery district or mosquito abatement district when the city, county, irrigation district, cemetery district or mosquito abatement district has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather, including parks, golf course positions and irrigation positions; or

(i) A person in a position that (i) is eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, if the person was not working less than half-time or less than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through

59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, which commences less than ninety (90) days after the person ceases to be an employee and ends less than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee as a result of his death while in active duty service, the member shall be entitled to military service through the date of death. Provided further, if a member fails to again become an employee due to a disability retirement resulting from service in the armed forces of the United States, the member shall be entitled to military service through the date the disability allowance becomes payable. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section 59-1362, Idaho Code.

(24)(a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.



(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31)(A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(d) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14)(A) of this section and is employed for fifteen (15) days or more during the calendar

month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

- (a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or
- (b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or
- (c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and
- (d) Was not covered by a merit system for employees of the state of Idaho, is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

#### History.

1963, ch. 349, Art. 1, § 2, p. 988; am. 1965, ch. 265, § 1, p. 682; am. 1967, ch. 398, § 1, p. 1184; am. 1969, ch. 283, § 1, p. 856; am. 1969, ch. 460, § 1, p. 1288; am. 1970, ch. 153, § 1, p. 473; am. 1971, ch. 49, § 1, p. 105; am. 1972, ch. 245, § 1, p. 636; am. 1974, ch. 57, § 2, p. 1118; am. 1975, ch. 217, § 1, p. 604; am. 1976, ch. 97, § 1, p. 403; am. 1979, ch. 158, § 1, p. 478; am. 1984, ch. 132, § 1, p. 308; am. 1985, ch. 84, § 1, p. 164; am. 1986, ch. 147, § 1, p. 409; am. 1987, ch. 346, § 1, p. 735; am. 1989, ch. 189, § 1, p. 465; am. 1989, ch. 190, § 1, p. 469; am. 1990, ch. 130, § 1, p. 300; am. 1990, ch. 231, § 2, p. 611; am. 1990, ch. 249, § 1, p. 702; am. 1991, ch. 61, § 1, p. 140; am. 1992, ch. 220, § 1, p. 658; am. 1992, ch. 342, § 1, p.

1037; am. 1993, ch. 350, § 2, p. 1295; am. 1994, ch. 209, § 1, p. 658; am. 1994, ch. 276, § 1, p. 856; am. 1994, ch. 411, § 1, p. 1296; am. 1995, ch. 143, § 1, p. 606; am. 1996, ch. 59, § 1, p. 170; am. 1996, ch. 79, § 1, p. 252; am. 1996, ch. 112, § 1, p. 415; am. 1997, ch. 72, § 1, p. 148; am. 1997, ch. 218, § 1, p. 642; am. 1998, ch. 22, § 1, p. 128; am. 1999, ch. 198, § 1, p. 508; am. 1999, ch. 199, § 1, p. 519; am. 1999, ch. 329, § 39, p. 852; am. 2002, ch. 46, § 1, p. 101; am. 2004, ch. 232, § 1, p. 679; am. 2004, ch. 294, § 1, p. 818; am. 2007, ch. 44, § 1, p. 105; am. 2010, ch. 143, § 1, p. 300; am. 2010, ch. 182, § 1, p. 371; am. 2011, ch. 100, §§ 1, 2, 3, p. 240; am. 2012, ch. 31, § 1, p. 90; am. 2012, ch. 217, § 1, p. 590; am. 2013, ch. 187, § 13, p. 447.

#### STATUTORY NOTES

#### Amendments.

The 2013 amendment, by ch. 187, in paragraph (14)(f), substituted "director of the of-

fice of personnel management" for "United States civil service commission."

**59-1306. Conformity with federal tax code to maintain qualified plan tax status.** — Chapter 13, title 59, and chapter 14, title 72, Idaho Code, shall be administered in a manner so as to comply with the requirements of 26 U.S.C. section 401(a)(8), (9), (16), (25), (31), (36) and (37) and with the vesting requirements described in 26 U.S.C. section 411(e)(2). The public employee retirement system board shall promulgate rules and

amend or repeal conflicting rules in order to assure compliance with the requirements of these sections. This chapter shall be in full force and effect only so long as compliance with paragraphs (8), (9), (16), (25), (31), (36) and (37) of subsection 401(a) and paragraph (2) of subsection 411(e) of the Internal Revenue Code is required for public retirement systems. If compliance with any such paragraph is, at any point no longer required, this provision or the applicable portion thereof, will cease to have any force or effect.

**History.**

I.C., § 59-1311A, as added by 1989, ch. 185, § 2, p. 460; am. and redesign. 1990, ch. 231,

§ 6, p. 611; am. 1998, ch. 193, § 1, p. 697; am. 2014, ch. 87, § 1, p. 237.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 87, rewrote the section, making the statutory changes required by the IRS to make the PERSI Base Plan a qualified governmental pension plan under 26 U.S.C.S. § 401(a).

“Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Compiler’s Notes.**

Section 2 of S.L. 2014, ch. 2 provided:

**59-1324. Transfer of moneys from state community college account.** — After July 1, 1984, the state board of education shall, at the request of the board, direct the transfer from the state community college account or from appropriations made for that purpose to the public employee retirement account of an aggregate sum in lieu of and equivalent to individual employer contributions provided by section 59-1322, Idaho Code, required with respect to employees of community college districts on the basis of salaries paid such employees as certified by the board to the state treasurer.

**History.**

I.C., § 59-1332B, as added by 1969, ch. 144, § 4, p. 466; am. 1984, ch. 180, § 6, p. 426; am.

and redesign. 1990, ch. 231, § 20, p. 611; am. 2013, ch. 187, § 14, p. 447.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 187, substituted “state community college account” for

“state junior college account” in the section heading and twice in the section.

**59-1391. Definitions.** — As used in sections 59-1391 through and including 59-1399, Idaho Code, each of the terms defined shall have the meaning given in this section or in section 59-1302, Idaho Code, unless a different meaning is clearly required by the context.

(a) “Board” means the retirement board of the employee system.

(b) “Firefighter member” means a person or beneficiary who, prior to October 1, 1980, was receiving benefits or establishing the right to receive benefits from the firefighters’ retirement fund.

(c) “Firefighters’ retirement fund” means the retirement system created by and existing pursuant to chapter 14, title 72, Idaho Code.

(d) “Employee system” means the retirement system created and existing pursuant to chapter 13, title 59, Idaho Code.

(e) “Employer” means a city or fire district that employs paid firefighters who are participating in the firefighters’ retirement fund on October 1, 1980.

(f) “Paid firefighter” means any individual, male or female, excluding office secretaries on the payroll of any city or fire district in the state of Idaho who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

**History.**

I.C., § 59-1351, as added by 1979, ch. 147,  
§ 1, p. 452; am. 1980, ch. 50, § 39, p. 79; am.

1984, ch. 132, § 8, p. 308; am. and redesisg.  
1990, ch. 231, § 61, p. 611; am. 1990, ch. 249,  
§ 9, p. 702; am. 2013, ch. 187, § 15, p. 447.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 187, deleted surplus language in the section, resultant

from the reconciliation of two 1990 amendments.

**CHAPTER 15**

**SUPPLEMENTAL RETIREMENT SYSTEM**

**SECTION.**

59-1501 — 59-1504. [Repealed.]

**59-1501. Supplemental retirement system — Widows of governors, senators or congressmen. [Repealed.]**

Repealed by S.L. 2014, ch. 231, § 1, effective July 1, 2014.

**History.**

I.C., § 59-1501, as added by 1975, ch. 193,  
§ 1, p. 537.

**59-1502. Supplemental retirement fund. [Repealed.]**

Repealed by S.L. 2014, ch. 231, § 1, effective July 1, 2014.

**History.**

I.C., § 59-1502, as added by 1975, ch. 193,  
§ 1, p. 537.

**59-1503. Applicability. [Repealed.]**

Repealed by S.L. 2014, ch. 231, § 1, effective July 1, 2014.

**History.**

I.C., § 59-1303, as added by 1975, ch. 193,  
§ 1, p. 537.

**59-1504. Supplemental retirement system limited. [Repealed.]**

Repealed by S.L. 2014, ch. 231, § 1, effective July 1, 2014.

**History.**

I.C., § 59-1504, as added by 1978, ch. 145,  
§ 1, p. 326.



**TITLE 60**  
**PUBLIC PRINTING AND OFFICIAL NOTICES**

CHAPTER.

3. UNIFORM ELECTRONIC LEGAL MATERIAL ACT.  
[EFFECTIVE JULY 1, 2015.], §§ 60-301 —  
60-311.

**CHAPTER 3**

**UNIFORM ELECTRONIC LEGAL MATERIAL ACT**  
**[EFFECTIVE JULY 1, 2015]**

SECTION.

- 60-301. Short title. [Effective July 1, 2015.]  
60-302. Definitions. [Effective July 1, 2015.]  
60-303. Applicability. [Effective July 1, 2015.]  
60-304. Legal material in official electronic  
record. [Effective July 1,  
2015.]  
60-305. Authentication of official electronic  
record. [Effective July 1,  
2015.]  
60-306. Effect of authentication. [Effective  
July 1, 2015.]  
60-307. Preservation and security of legal  
material in official electronic

SECTION.

- record. [Effective July 1,  
2015.]  
60-308. Public access to legal material in  
official electronic record. [Ef-  
fective July 1, 2015.]  
60-309. Standards. [Effective July 1, 2015.]  
60-310. Uniformity of application and con-  
struction. [Effective July 1,  
2015.]  
60-311. Relation to electronic signatures in  
global and national commerce  
act. [Effective July 1, 2015.]

**60-301. Short title. [Effective July 1, 2015.]** — This act may be cited as the “Uniform Electronic Legal Material Act.”

**History.**

I.C., § 60-301, as added by 2014, ch. 278,  
§ 1, p. 702.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-302. Definitions. [Effective July 1, 2015.]** — In this act:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(2) “Legal material” means:

(a) The constitution of the state of Idaho;

(b) The general laws of the state of Idaho, also known as the session laws;

(c) The Idaho code;

(d) The Idaho administrative code and the Idaho administrative bulletin;

(e) Reported decisions of the following state courts: the Idaho supreme court and the court of appeals; or

(f) Idaho court rules.

(3) “Official publisher” means:

(a) For the constitution of the state of Idaho, the secretary of state;

(b) For the general laws of the state of Idaho, the secretary of state;

(c) For the Idaho code, the Idaho code commission;

(d) For a rule published in the Idaho administrative code, the administrative rules coordinator;

(e) For a rule published in the Idaho administrative bulletin, the administrative rules coordinator;

(f) For a state court decision included under subsection (2)(e) of this section, the clerk of the supreme court (ex officio reporter);

(g) For Idaho court rules, the Idaho code commission.

(4) “Publish” means to display, present or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**History.**

I.C., § 60-302, as added by 2014, ch. 278,  
§ 1, p. 702.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-303. Applicability. [Effective July 1, 2015.]** — (1) This act applies to all legal material in an electronic record that is designated as official under section 60-304, Idaho Code, and first published electronically on or after July 1, 2015.

(2) This act applies to the following legal material in an official electronic record that was first published before July 1, 2015:

(a) The Idaho administrative code for the years 2010, 2011, 2012, 2013 and 2014.

(b) The Idaho administrative bulletin for the years 2010, 2011, 2012, 2013 and 2014.

**History.**

I.C., § 60-303, as added by 2014, ch. 278,  
§ 1, p. 702.



## STATUTORY NOTES

**Compiler's Notes.**

The term "this act" refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-304. Legal material in official electronic record. [Effective July 1, 2015.]** — (1) If an official publisher publishes legal material only in an electronic record, the publisher shall:

- (a) Designate the electronic record as official; and
- (b) Comply with sections 60-305, 60-307 and 60-308, Idaho Code.

(2) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 60-305, 60-307 and 60-308, Idaho Code.

**History.**

I.C., § 60-304, as added by 2014, ch. 278, § 1, p. 702.

## STATUTORY NOTES

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-305. Authentication of official electronic record. [Effective July 1, 2015.]** — An official publisher of legal material in an electronic record that is designated as official under section 60-304, Idaho Code, shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

**History.**

I.C., § 60-305, as added by 2014, ch. 278, § 1, p. 702.

## STATUTORY NOTES

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-306. Effect of authentication. [Effective July 1, 2015.]** — (1) Legal material in an electronic record that is authenticated under section 60-305, Idaho Code, is presumed to be an accurate copy of the legal material.

(2) If another state has adopted a law substantially similar to this act, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(3) A party contesting the authentication of legal material in an electronic

record authenticated under section 60-305, Idaho Code, has the burden of proving by a preponderance of the evidence that the record is not authentic.

**History.**

I.C., § 60-306, as added by 2014, ch. 278,  
§ 1, p. 702.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" in subsection (2) refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-307. Preservation and security of legal material in official electronic record. [Effective July 1, 2015.]** — (1) An official publisher of legal material in an electronic record that is or was designated as official under section 60-304, Idaho Code, shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(2) If legal material is preserved under subsection (1) of this section in an electronic record, the official publisher shall:

- (a) Ensure the integrity of the record;
- (b) Provide for backup and disaster recovery of the record; and
- (c) Ensure the continuing usability of the material.

**History.**

I.C., § 60-307, as added by 2014, ch. 278,  
§ 1, p. 702.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-308. Public access to legal material in official electronic record. [Effective July 1, 2015.]** — An official publisher of legal material in an electronic record that is required to be preserved under section 60-307, Idaho Code, shall ensure that the material is reasonably available for use by the public on a permanent basis.

**History.**

I.C., § 60-308, as added by 2014, ch. 278,  
§ 1, p. 702.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-309. Standards. [Effective July 1, 2015.]** — In implementing this act, an official publisher of legal material in an electronic record shall consider:

- (1) Standards and practices of other jurisdictions;
- (2) The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) The needs of users of legal material in an electronic record;
- (4) The views of governmental officials and entities and other interested persons; and
- (5) To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material that are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this act.

**History.**

I.C., § 60-309, as added by 2014, ch. 278, § 1, p. 702.

**STATUTORY NOTES****Compiler's Notes.**

The term "this act" in the introductory paragraph and in subsection (5) refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-310. Uniformity of application and construction. [Effective July 1, 2015.]** — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 60-310, as added by 2014, ch. 278, § 1, p. 702.

**STATUTORY NOTES****Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

**60-311. Relation to electronic signatures in global and national commerce act. [Effective July 1, 2015.]** — This act modifies, limits and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

**History.**

I.C., § 60-311, as added by 2014, ch. 278, § 1, p. 702.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" refers to S.L. 2014, ch. 278, which is compiled as §§ 60-301 to 60-311.

**Effective Dates.**

Section 2 of S.L. 2014, ch. 278 makes this act effective on July 1, 2015.

# TITLE 61

## PUBLIC UTILITY REGULATION

CHAPTER.

1. PUBLIC UTILITIES LAW — APPLICATION AND DEFINITIONS, §§ 61-114, 61-129.
2. PUBLIC UTILITIES COMMISSION, § 61-215.

CHAPTER.

6. PROCEDURE BEFORE COMMISSION AND IN COURTS, §§ 61-622, 61-623.

### CHAPTER 1

## PUBLIC UTILITIES LAW — APPLICATION AND DEFINITIONS

SECTION.

61-114. Pipeline.

SECTION.

61-129. Public utility.

**61-114. Pipeline.** — (1) The term “pipeline” when used in this act includes all real estate, gathering lines, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, storage, distribution or delivery of natural gas or manufactured gas, crude oil or other fluid substances except water through pipelines.

(2) “Gathering lines” means fixtures, valves, pipes and other property used to transport, deliver or distribute natural gas, manufactured gas, natural gas condensate, crude oil or other petroleum products from a wellhead to a transmission line.

**History.**

1913, ch. 61, § 2m, p. 247; reen. 1915, ch. 62, § 1m, p. 152; reen. 1917, ch. 128, subd. m,

p. 430; reen. C.L. 106:14; C.S., § 2381; I.C.A., § 59-114; am. 2012, ch. 72, § 1, p. 207; am. 2014, ch. 108, § 1, p. 315.

### STATUTORY NOTES

**Amendments.**

The 2014 amendment, by ch. 108, rewrote subsection (2), which formerly read: “Gathering lines’ means fixtures, valves, pipes and other property used to transport, deliver or distribute natural gas, manufactured gas or crude oil from a wellhead to a treatment facility or a point of interconnection with another gathering line, a transmission line or main line”.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-624 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

**Effective Dates.**

Section 3 of S.L. 2014, ch. 108 declared an emergency. Approved March 18, 2014.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1913, ch.

### RESEARCH REFERENCES

**Idaho Law Review.** — A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in

Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**61-129. Public utility.** — The term “public utility” when used in this act includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation and water corporation, as those terms are defined in this chapter and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act. The term “public utility” as used in this act shall cover cases:

(1) Where the service is performed and the commodity delivered directly to the public or some portion thereof, and where the service is performed or the commodity delivered to any corporation or corporations, or any person or persons, who in turn, either directly or indirectly or mediately or immediately, performs the services or delivers such commodity to or for the public or some portion thereof; and

(2) Where a pipeline corporation delivers the commodity to any corporation, person, their lessees, receivers or trustees regardless of whether it offers the pipeline service or commodity to the public or some portion thereof. Such pipeline shall be subject to the safety supervision and regulation of the commission only, unless and until such pipeline corporation makes application to the commission to be regulated generally as a public utility.

**History.**

1913, ch. 61, § 2bb, p. 247; am. 1915, ch. 62, § 1bb, p. 555; am. 1917, ch. 128, subd. bb, p. 430; reen. C.L. 106:29; C.S., § 2396; I.C.A.,

§ 59-129; am. 1967, ch. 6, § 1, p. 9; am. 1982, ch. 5, § 2, p. 8; am. 2010, ch. 167, § 3, p. 343; am. 2012, ch. 72, § 2, p. 207; am. 2014, ch. 108, § 2, p. 315.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 108, added “only, unless and until such pipeline corporation makes application to the commission to be regulated generally as a public utility” at the end of subsection (2).

**Compiler’s Notes.**

The term “this act” refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-624 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

**Effective Dates.**

Section 3 of S.L. 2014, ch. 108 declared an emergency. Approved March 18, 2014.

**RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in

Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**CHAPTER 2**

**PUBLIC UTILITIES COMMISSION**

**SECTION.**

61-215. Salaries of public utilities commissioners.

**61-215. Salaries of public utilities commissioners.** — Each member of the public utilities commission shall devote full time to the performance of his/her duties. Commencing on July 1, 2014, the annual salary of members of the public utilities commission shall be ninety-four thousand nine hundred fifty dollars (\$94,950) and shall be paid from sources set by the legislature.

**History.**

I.C., § 61-215, as added by 1987, ch. 60, § 1, p. 108; am. 1990, ch. 115, § 1, p. 239; am. 1993, ch. 45, § 1, p. 117; am. 1998, ch. 358, § 2, p. 1121; am. 1999, ch. 18, § 1, p. 26; am. 2000, ch. 359, § 1, p. 1195; am. 2001, ch. 253,

§ 1, p. 918; am. 2004, ch. 281, § 1, p. 774; am. 2006, ch. 368, § 1, p. 1106; am. 2007, ch. 121, § 1, p. 370; am. 2008, ch. 285, § 1, p. 807; am. 2012, ch. 224, § 1, p. 610; am. 2014, ch. 316, § 1, p. 780.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 316, substituted “2014” for “2012” and “ninety-four thousand nine hundred fifty dollars (\$94,950)” for “ninety-four thousand ten dollars (\$94,010).”

“Notwithstanding any other provision of law to the contrary, commissioner salaries referenced in Sections 1 [this section], 2 and 3 of this act shall be increased by the equivalent of 1% for the period July 1, 2014, through June 30, 2015.”

**Compiler’s Notes.**

Section 7 of S.L. 2014, ch. 316 provided:

**CHAPTER 6**

**PROCEDURE BEFORE COMMISSION AND IN COURTS**

**SECTION.**

61-622. Finding of commission necessary for increase in rate and approval of a new tariff or schedule — Suspension.

**SECTION.**

61-623. Determination of schedule and regular rates. [Repealed.]

**61-622. Finding of commission necessary for increase in rate and approval of a new tariff or schedule — Suspension.** — (1) No public utility shall raise any existing rate, fare, toll, rental or charge or so alter any existing classification, contract, practice, rule, service or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

(2) Whenever there shall be filed with the commission any tariff or schedule stating a new individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation that does not increase or result in the increase of any existing rate, fare, toll, rental or charge, such tariff or schedule shall not become effective except upon a showing to and a finding by the commission that such tariff or schedule is justified.

(3) The commission shall have power and is hereby given authority to suspend the proposed effective date of any new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation, either upon complaint or upon its own initiative without complaint, at

once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities. The commission shall provide reasonable notice that it intends to conduct a hearing or other proceeding concerning the propriety of such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation. Pending the subsequent hearing or proceeding and decision thereon, such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation shall not go into effect.

(4) The period of suspension of such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation shall not extend beyond thirty (30) days when such new tariff, schedule, rate, fare, toll, rental, charge, classification, contract, practice, rule, service or regulation would otherwise go into effect, pursuant to section 61-307, Idaho Code, unless the commission in its discretion extends the period of suspension for an initial period not exceeding five (5) months, nor unless the commission after a showing of good cause on the record grants an additional sixty (60) days. Prior to the expiration of said periods of suspension the commission may, with the consent in writing signed by the party filing such new tariff or schedule, permanently or further suspend the same.

(5) After such hearing or other proceeding during the suspension period, the commission shall issue its order approving, denying or amending the proposed tariffs, schedules, rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, services or regulations in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.

**History.**

1913, ch. 61, § 59a, p. 247; reen. C.L. § 106:131; C.S., § 2499; I.C.A., § 59-622; am.

1975, ch. 81, § 1, p. 166; am. 1976, ch. 263, § 1, p. 887; am. 2013, ch. 193, § 1, p. 476.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 193, rewrote

the section to the extent that a detailed comparison is impracticable.

**61-623. Determination of schedule and regular rates. [Repealed.]**

Repealed by S.L. 2013, ch. 193, § 2, effective July 1, 2013. For present comparable provisions, see § 61-622.

**History.**

1913, ch. 61, § 59b, p. 247; reen. C.L.

106:132; C.S., § 2500; am. 1927, ch. 184, § 1, p. 247; I.C.A., § 59-623.









